

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2014-0063

Ardagh Glass Inc.
Seattle, Washington

**COMPLIANCE ORDER
ON CONSENT**

Respondent.

I. STATUTORY AUTHORITY

1.1 This Compliance Order on Consent ("Order") is entered into voluntarily by Ardagh Glass Inc. ("Respondent") and is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318, 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10 and has been re-delegated to the Director of the Office of Compliance and Enforcement.

1.2 Respondent waives any and all claims of relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act. 5 U.S.C. §§ 701- 706.

II. FINDINGS AND CONCLUSIONS

2.1 Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of a pollutant" by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the

discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

2.2 Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

2.3 Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes and industrial waste.

2.4 Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

2.5 Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any storm water discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional storm water discharge sources and establish a comprehensive program to regulate these additional sources.

2.6 EPA’s regulations define “storm water discharge associated with industrial activity” to include discharges associated with facilities under Standard Industrial Classification 32. 40 C.F.R. § 122.26(b)(14)(ii).

2.7 The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

2.8 In October 2009, Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Storm Water GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2010 Storm Water GP became effective on January 1, 2010 and has an expiration date of January

1, 2015. The 2010 Storm Water GP was modified with the new effective date of July 1, 2012. The 2010 Storm Water GP authorizes certain discharges of storm water associated with industrial activity at permitted facilities.

2.9 The 2010 Storm Water GP requires facilities engaged in certain industrial activities to apply for coverage under the permit if storm water from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable Storm Water GP.

2.10 Respondent is a corporation duly organized under the laws of the State of Delaware and is therefore a "person" as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

2.11 At all times relevant to this action, Respondent was the owner and/or operator of a 17 acre facility in Seattle, Washington that produces glass ("Facility"). Raw materials used to make the glass consist of sand, soda ash, limestone, and cullet (recycled glass) with small amounts of carbocite, iron pyrites, iron chromite, salt cake, powder blue, and selenium.

2.12 The Facility, which was under Respondent's control at all times relevant to this action, discharges storm water offsite into the Duwamish River. The Facility's storm water discharges contain "pollutants" within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

2.13 The Duwamish River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus the Duwamish River is a "navigable water" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water of the United States" as defined in 40 C.F.R. § 122.2.

2.14 The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

2.15 At all times relevant to this CAFO, the Facility had coverage under the 2010 Storm Water GP (permit no. WAR001134).

2.16 Condition S4.B.1.a. of the 2010 Storm Water GP requires the Permittee to sample the storm water discharge from each designated location at least once per quarter.

2.17 Condition S4.B.2.a. states that the Permittee "shall designate sampling location(s) at the point(s) where it discharges stormwater associated with industrial activity off-site."

2.18 Condition S4.B.2.c. states that the Permittee "shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a 'substantially identical outfall' per S3.B.5.b." Substantially identical outfall means "two or more outfalls [that] discharge substantially identical effluents."

2.19 Condition S3.B.5 requires the Permittee to include a sampling plan as part of its Storm Water Pollution Prevention Plan ("SWPPP") that identifies the points of discharge and documents the location of discharge points that the Permittee does not sample because the pollutant concentrations are substantially identical to a discharge point being sampled.

2.20 Respondent's SWPPP dated June, 2012, identifies Outfall 002 as the location where quarterly samples are taken. Respondent also discharges industrial storm water offsite into a catch basin located near the southwest corner of Facility along South Fidalgo Street ("Outfall 006").

2.21 Discharges into Outfall 006 are not "substantially identical" to Outfall 002, nor were discharges into Outfall 006 identified or documented as "substantially identical" in the Facility's SWPPP. Between January 2010 and January 2014, Respondent failed to conduct quarterly sampling of the storm water discharges offsite into Outfall 006 in violation of

Condition S4.B.4. of the 2010 Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

2.22 In March 2014, Respondent revised its SWPPP, identifying Outfall 006 as a stormwater discharge point and sampling location in accordance with Conditions S3.B.1. and S3.B.5. of the 2010 Storm Water GP.

2.23 Taking into account the seriousness of these violations and Respondent's good faith efforts to comply with applicable requirements after being notified of the violations by EPA, the parties acknowledge and agree to the compliance measures contained in the following Order.

III. COMPLIANCE ORDER ON CONSENT

Based upon the foregoing FINDINGS AND CONCLUSIONS and pursuant to Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), it is AGREED and ORDERED as follows:

3.1 In accordance with the general sampling requirements of the 2010 Storm Water GP, Condition S.4., Respondent shall sample the discharge at Outfall 006 at least once per quarter for the period of one year, commencing on the effective date of this agreement as described in paragraph 3.9 below.

3.2 Respondent shall make the sampling results described in Paragraph 3.1 available to EPA upon request.

3.3 In the event Respondent is unable to comply with the requirements of this Order, Respondent shall, within 10 days of becoming aware of such inability, provide a written notification to EPA containing the following information:

3.3.1. A summary of the specific reasons why Respondent is unable to comply with the requirement;

3.3.2. A summary of all actions taken by Respondent which Respondent alleges demonstrates "good faith efforts" to comply with the requirement; and

3.3.3. The expected date and required activities by which Respondent will comply with the requirement.

3.4 Respondent may submit a written request to EPA to terminate this Order, after Respondent has completely satisfied Paragraph 3.1. As part of the request for termination, Respondent shall certify that it has satisfied all of the criteria specified within Paragraphs 3.1. of this Order.

3.5 Notifications and submittals required by this Order must be sent to:

Chae Park, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

3.6 Respondent admits the jurisdictional allegations contained in this Order. Respondent neither admits nor denies the specific factual findings and conclusions contained in this Order.

3.7 The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order and to bind Respondent to this document.

3.8 The provisions of this Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

3.9 This Order shall become effective on the date it is signed by EPA.

3.10 The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

IV. SANCTIONS

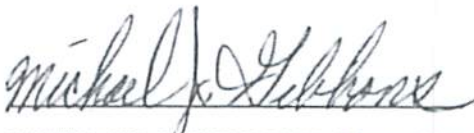
5.1 Failure to comply with the terms of this Order may result in Respondent's liability for statutory civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the Order.

5.2 Nothing in this Order shall be construed to relieve Respondent of applicable requirements of federal, state or local laws. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order or any other applicable requirements.

DATED:

9/11/14

FOR RESPONDENT:

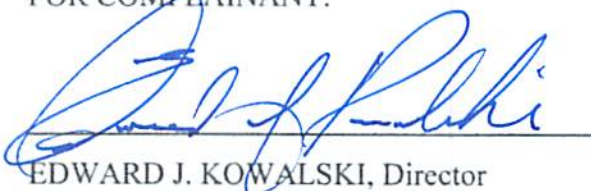


MICHAEL J. GIBBONS, Plant Manager, Seattle WA
Ardagh Glass Inc.

DATED:

9/25/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10